Davlan Engineering, Inc. *and* District No. 9, International Association of Machinists and Aerospace Workers, AFL–CIO, Petitioner. Case 14–RC–9383

July 13, 1982

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held May 15, 1981,[1] and the Regional Director's Supplemental Report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Regional Director's findings[2] and recommendations.[3]

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for District No. 9, International Association of Machinists and Aerospace Workers, AFL–CIO, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> All full-time and regular part-time production and maintenance employees employed by the Employer at its 3644 Scarlet Oak Blvd., St. Louis County, Missouri, facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

CHAIRMAN VAN DE WATER, dissenting:

Contrary to my colleagues, I find that the *Savair* violations committed by employees Rachels, German, Nickels, and Hanicke are sufficient to warrant setting aside the election. The Hearing Officer concluded that the above-mentioned employees conditioned reduction or waiver of initiation fees upon employees signing authorization cards prior to the election but concluded that they were not agents of the Union and that there was no evidence that the Petitioner's organizer, Owens, or Business Representative Vaughn made or ratified such remarks.

Inasmuch as four employees were given authority to solicit authorization cards and that Vaughn provided Hanicke with authorization cards and instructions to distribute the cards on his own time, I find that they were granted a limited agency to act on behalf of the Union and that any comments they made with respect to such solicitation of cards is attributable to the Union. Granted such employees are not agents of the Union with respect *to all matters* concerning the Union's organizational campaign, when employees are permitted or authorized to solicit union authorization cards, any comments they make to other employees about such cards are within the scope of their limited agency. See *Star Expansion Industries Corporation*, 170 NLRB 364, 365 at fn. 8 (1968); *N.L.R.B.* v. *Georgetown Dress Corporation*, 537 F.2d 1239 (4th Cir. 1976). Because of the widespread nature of the *Savair* violations and the size of the unit, a new election is warranted.[4]

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 34 for, and 16 against, the Petitioner; there were 2 challenged ballots, an insufficient number to affect the results.

[2] The Employer has excepted to certain credibility resolutions of the Hearing Officer and adopted by the Regional Director. It is the established policy of the Board not to overturn a hearing officer's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481, 483 (1961); *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no sufficient basis for disturbing the credibility resolutions in this case.

[3] Contrary to our dissenting colleague, we agree with the Regional Director's determination that employees Rachels, German, Nickels, and Hanicke were not agents of the Union. In so doing, we continue to adhere to established Board precedent which holds that the solicitation of authorization cards by employees, standing alone, does not make those employees agents of the union. *Allied Metal Hose Company, Inc.*, 219 NLRB 1135 (1975); *Jefferson Food Mart, Inc., d/b/a Call-A-Mart*, 214 NLRB 225, 228 (1974). Accordingly, statements made by the four employees are not imputable to the Petitioner, and thus the Petitioner has not violated the standards of *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270 (1973).

[4] In agreement with the Regional Director's recommendation that Objections 3, 4, and 5 be overruled, I would find that the alleged misrepresentations do not warrant the setting aside of the election under either the majority or dissenting view expressed in *General Knit of California, Inc.*, 239 NLRB 619 (1978).